

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 19-90029

ORDER

THOMAS, Chief Judge:

Complainant, a debtor in a bankruptcy proceeding, has filed a complaint of judicial misconduct against a bankruptcy judge. Review of this complaint is governed by the Rules for Judicial Conduct and Judicial-Disability Proceedings (“Judicial-Conduct Rules”), the federal statutes addressing judicial conduct and disability, 28 U.S.C. § 351 et seq., and relevant prior decisions of the Ninth Circuit Judicial Council. In accordance with these authorities, the names of complainant and the subject judge shall not be disclosed in this order. See Judicial-Conduct Rule 11(g)(2).

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, following review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling,

or is frivolous or lacks sufficient evidence to raise an inference of misconduct.

See 28 U.S.C. § 352(b)(1)(A)(i)-(iii). Judicial misconduct proceedings are not a substitute for the normal appellate review process, and may not be used to seek reversal of a judge's decision, to obtain a new trial, or to request reassignment to a different judge.

Complainant alleges that the judge was improperly hostile, talked over and mocked his attorney, and entered orders that were “mocking, disrespectful and designed to humiliate counsel.” A review of the record, including the hearing transcript and various orders cited by complainant, does not reveal any behavior that rises to the level of misconduct. Although the judge made a number of pointed and highly critical remarks about counsel's performance of her duties, these comments were directly related to counsel's conduct in the underlying proceedings (e.g., failure to comply with applicable rules of court), and were not abusive or personally demeaning. See, e.g., In re Complaint of Judicial Misconduct, 761 F.3d 1097, 1098-99 (9th Cir. Jud. Council 2014) (“Misconduct includes treating litigants or attorneys in a demonstrably egregious and hostile manner The comments here do not meet that standard. The judge did not use demeaning language or heap abuse on anybody. His statements were blunt but measured expressions of frustration with having his orders disregarded by

someone in whom he had placed confidence”); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009) (“The transcript . . . indicates that the judge, while frustrated by the tactics of both parties, remained professional and did not exhibit bias. Allegedly improper statements quoted by complainant were, in context, completely benign”); Larson v. Palmateer, 515 F.3d 1057, 1067 (9th Cir. 2008) (“neither adverse rulings nor impatient remarks are generally sufficient to overcome the presumption of judicial integrity”). Accordingly, this charge is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 761 F.3d 1097, 1098-99 (9th Cir. Jud. Council 2014); Judicial-Conduct Rules 3(h)(1)(D), 11(c)(1)(D).

Complainant also alleges that the judge has improperly delayed the underlying proceedings. To the extent complainant alleges that the judge improperly granted continuances, or caused delay by rejecting disclosure statements and ruling that certain claims must be liquidated, these allegations relate directly to the merits of the judge’s rulings and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Judicial Misconduct, No. 16-90035 (9th Cir. Jud. Council May 10, 2016); In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); Judicial-Conduct Rule 11(c)(1)(B). Moreover, complainant offers no evidence that any alleged delay was based on

improper motive, or that the judge has habitually delayed ruling in a significant number of unrelated cases. Accordingly, this charge must be dismissed. See Judicial-Conduct Rule 3(h)(3)(B); In re Complaint of Judicial Misconduct, 584 F.3d 1230, 1231 (9th Cir. Jud. Council 2009).

Finally, complainant alleges that the judge is biased against him and counsel. However, adverse rulings are not proof of bias, see In re Complaint of Judicial Misconduct, 650 F.3d 1370, 1371 (9th Cir. Jud. Council 2011), and cited statements made by the judge in orders and at hearings are not sufficient to raise an inference of bias or other misconduct. Accordingly, this allegation must be dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 583 F.3d 598 (9th Cir. Jud. Council 2009); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

DISMISSED.